**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE A.K.BASHEER**

**THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929**

**WP(C).No. 17584 of 2007(R)**
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**PETITIONER:**
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**SANTHI M.K., W/O.A.V.SANJEEVAN,**
**AGED 37 YEARS, MANAGER, PRANSANTI LADIES HOSTEL,**
**THENJIPALAM P.O., MALAPPURAM DISTRICT.**

**BY ADV. SRI.K.T.SHYAMKUMAR**
**SRI.HARISH R. MENON**
**SRI.NOBY M.JOSEPH**

**RESPONDENTS:**
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**1. THENJIPALAM GRAMA PANCHAYATH,**
**THENJIPALAM, MALAPPURAM DISTRICT, REPRESENTED BY ITS SECRETARY.**

**2. CHEMPRAKKUKZHI UNNIKRISHNAN,**
**VICE-PRESIDENT, THENJIPALAM GRAMA PANCHAYATH,**
**THENJIPALAM, MALAPPURAM DISTRICT.**

**3. SHERLY SHOBANA H.V.,**
**SECRETARY, THENJIPALAM GRAMA PANCHAYATH,**
**THENJIPALAM, MALAPPURAM DISTRICT.**

**BY ADV. SRI.P.C.SASIDHARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 17584/2007 R**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE NOTICE DT. 25/5/07 BY THE R1 PANCHAYATH TO THE PETITIONER.**

**EXT.P2. COPY OF THE INTERIM ORDER DT. 29/05/2007 IN WPC NO. 16275/2007.**

**EXT.P3. COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE PANCHAYATH COMMITTEE DT. 31/5/2007.**

**EXT.P4. COPY OF THE ORDER DT. 2/6/2007 ISSUED BY THE R1.**

**EXT.P5. COPY OF THE RP FILED BY THE PETITIONER BEFORE THE TRIBUNAL FOR LOCAL SELF GOVT. INSTITUTIONS.**

**EXT.P6. COPY OF THE ORDER DT. 4/6/2007 BY THE TRIBUNAL FOR LOCAL SELF GOVT. INSTITUTIONS THIRUVANANTHAPURAM IN IA NO. 400/2007 IN RP NO. 50/2007.**

**EXT.P7. COPY OF THE ORDER DT. 11/6/07 BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS THIRUVANANTHAPURAM.**

**RESPONDENT'S EXHIBITS**

**EXT.R1A. COPY OF THE MAHAZAR DT. 3/6/07.**

**EXT.R1B. COPY OF THE NOTICE DT. 3/6/07.**

**EXT.R1C. COPY OF THE LETTER DT. 16/4/2007 BY THE PANCHAYATH.**

**EXT.R1D. COPY OF THE REQUEST OF THE PETITIONER DT. 6/6/07.**

**EXT.R1E. COPY OF THE COMMUNICATION DT. 11/06/2007 OF THE POLLUTION CONTROL BOARD.**

**EXT.R1F. COPY OF THE COMMUNICATION DT. 12/06/2007 OF THE PANCHAYATH.**

**// TRUE COPY //**

**A.K. Basheer, J.**

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**W.P(C) No. 17584 of 2007**

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**Dated this the 21st day of June, 2007.**

**JUDGMENT**

Petitioner is stated to be the Manager of a Ladies Hostel at Thenjipalam, Malappuram District. According to her, there are 25 inmates in the hostel who are students of the Calicut University. Though, in the nature of the relief sought for in this writ petition it is not necessary to advert to the factual matrix of the case in detail, it is still necessary to refer to some of the essential facts for a proper disposal of the case.

2. Petitioner was served with Ext.P1 notice issued by the Thenjipalam Grama Panchayat on May 25, 2007, directing her to stop functioning of the hostel within three days if adequate measures were not taken to prevent the jettisoning of dirty water from the property to the nearby stream. Petitioner was asked to make adequate provision to store the waste water in her property itself. The above notice was challenged by the petitioner before this Court in W.P.(C) No.16275/07. This Court directed the petitioner to prefer an appeal against Ext.P1 notice before the Panchayat as provided under the Statute. The Panchayat in turn was directed to take a decision in the matter.

3. It is not in dispute that the petitioner had preferred the appeal on June 1, 2007. The appeal was heard and disposed of by the Panchayat Committee on June 2, 2007. It is on record that on the next day, viz. June 3, 2007, the Panchayat sealed the hostel premises at about 11 a.m. as revealed from Ext.R1(a).

4. Petitioner preferred an appeal against the above order of the

Panchayat before the Tribunal for Local Self Government Institutions, Trivandrum, on the next working day itself, i.e. June 4, 2007. The Tribunal passed an interim order on the same day interdicting the Panchayat from taking further action pursuant to the decision taken by it on the appeal referred to earlier. The order passed by the Tribunal is on record as Ext.P6.

5. It is contended by the petitioner that the Panchayat was bound to obey the interim order passed by the Tribunal. The lock and seal put on the premises of the hostel ought to have been removed, thereby enabling the petitioner to start functioning of the hostel. Petitioner points out that Ext.R1(a) will by itself show that petitioner had closed down the hostel in obedience to the order passed by the Panchayat as is seen recorded in the said document that the gate of the hostel was found locked from outside. It is submitted on behalf of the petitioner that as a law abiding citizen, petitioner having obeyed the order of the Panchayat and stopped functioning of the hostel, it was incumbent on the part of the statutory body to obey and respect the order passed by the Tribunal. Though the petitioner had made a request to the Panchayat to allow the petitioner to start functioning of the hostel in the light of the order passed by the Tribunal, the Panchayat refused to pay any attention to the said request. It is in the above circumstances that the petitioner has preferred this writ petition.

6. It may be noticed that the primary prayer in the writ petition is to issue an appropriate writ, order or direction to the Panchayat to open the hostel forthwith and to allow the petitioner to run it in the light of the interim order passed by the Tribunal. The interim prayer in the writ petition is also the same.

7. The Panchayat has appeared through learned counsel and filed

a counter affidavit as well as an additional counter affidavit. Having heard learned counsel for the parties, I am of the view that instead of passing any interim order, the writ petition itself can be disposed of in the peculiar facts and circumstances of the case.

8. There is no dispute that the Tribunal has passed Ext.P6 order. Of course, it is an ex-parte order. Learned counsel for the Panchayat submits that a counter affidavit has already been filed before the Tribunal and the case is now posted to June 23, 2007. It is further contended that the decision of the Panchayat had worked itself out in as much as the said order was implemented by the Panchayat on June 3, 2007. The contention of the Panchayat appears to be that the interim order of the Tribunal is of no consequence or significance in as much as by the time the Tribunal passed Ext.P6 interim order, the issue had become fait accompli in as much as the Panchayat had already implemented its decision. I am unable to agree.

9. As noticed earlier, petitioner had preferred an appeal before the Panchayat as directed by this Court on June 1, 2007. The appeal was heard by the Panchayat on the next day. It happened to be a Saturday. Admittedly the order of the Panchayat was implemented by it on the next day, which is undisputedly a Sunday, in the forenoon itself. Though the haste with which it was done cannot be termed as unholy in strict sense, still the nature of the nuisance being such, the Panchayat might have been justified in implementing its order without any undue delay. To that extent the stand taken by the Panchayat cannot be faulted.

10. However, when a statutory Tribunal, which is presided over by a District Judge passes an interim order against the decision of the Panchayat, the statutory body has to necessarily show the elementary

courtesy, respect and deference to the said order. Rule of law must always prevail. A judicial body had considered the statutory revision and passed an interim order. Such an order must be necessarily obeyed and respected. The Panchayat cannot show the audacity to ignore the order as though it is not bound to abide by the said order since it had already implemented its decision. The above contention seems to have been taken under the premise that nothing more remains to be done pursuant to the decision of the Panchayat in as much as the decision has already been implemented. Yet again I am unable to agree with the above proposition.

11. In the above facts and circumstances, the prayer made by the petitioner for a direction to the Panchayat to remove the seal and lock from the gate of the hostel cannot be said to be untenable. However, I hasten to add that the ultimate decision in the matter will hinge on the order that has to be passed by the Tribunal in the matter. As mentioned earlier, the Panchayat has reportedly moved the Tribunal and requested for an early hearing and the case now stands posted to June 23, 2007. I make it clear that I have not considered the merit of the case in any manner. It will be open to the parties to approach the Tribunal and get an expeditious decision in the matter, if so advised. Panchayat can also move the Tribunal for modification of the interim order. But, in the meanwhile, the Panchayat is bound to obey and respect the interim order passed by the Tribunal.

12. It is also made clear that petitioner will be bound by Ext.R1 (e) notice issued by the Kerala State Pollution Control Board directing her to comply with certain directions or conditions, which again may be subject to the challenge that the petitioner may be entitled to take under law. It is also made clear that if there is any other violation apart from

what has been indicated in the earlier notice issued by the Panchayat, it will be open to the Panchayat to pursue the same in accordance with law. The Panchayat shall therefore implement Ext.P6 order forthwith subject to the directions and observations made above.

The writ petition is disposed of in the above terms.

**A.K. Basheer , Judge.**

**vps**